

DEPARTMENT OF STATE REVENUE

04-20120330.LOF

Letter of Findings Number: 04-20120330
Use Tax
For Tax Years 2008 and 2009

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ISSUE**I. Use Tax—Agricultural Equipment Exemption.**

Authority: IC § 6-2.5-3-2; IC § 6-2.5-5-2; IC § 6-8.1-5-1; IC § 6-8.1-5-2; [45 IAC 2.2-5-4](#).

Taxpayer protests the assessment of use tax on two tractors.

STATEMENT OF FACTS

Taxpayer is a farmer. Taxpayer raises calves on his farm. As the result of an investigation, the Indiana Department of Revenue ("Department") issued proposed assessments for use tax on the purchase of two tractors purchased, a "Massey Ferguson 20" purchased in the tax year 2008 and a "Ford 861" purchased in the tax year 2009 (the "Tractors"). Taxpayer protests the proposed assessment of use tax on its purchase of the Tractors. An administrative hearing was conducted by telephone and this Letter of Findings results. Further facts will be supplied as required.

I. Use Tax—Agricultural Equipment Exemption.**DISCUSSION**

Taxpayer protests the imposition of use tax on the purchase of the tractors. Taxpayer protests that the uses of the Tractors were for farm related activities, inter alia, spreading fertilizer, reseeding pasture, hauling tools and equipment, and to pull a bush hog. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The use tax is imposed under IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

IC § 6-2.5-5-2 states:

(a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property **acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.**

(b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:

- (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
- (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
- (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

(Emphasis added).

Also of relevance is [45 IAC 2.2-5-4](#), which states in relevant part:

(a) Agricultural exemption certificates may be used only if the purchaser is occupationally engaged in the business of producing food or commodities for human, animal, or poultry consumption for sale or for further use in such production.

(b) The department has determined that persons occupationally engaged in producing food and commodities as used in the Indiana sales and use tax act, shall mean and include only those persons, partnerships, or corporations whose intention it is to operate a farm at a profit and not those persons who intend to operate a farm for pleasure as a hobby. Operations similar to those of a pony farm, riding stable, or the production and raising of dogs and pets, are not classified as farms for the purpose of the state gross retail tax act.

...

(d) Each of the following items is considered exempt from the sales tax ONLY when the purchaser is occupationally engaged in agricultural production and **uses the items directly in direct production of agricultural products.**

EXEMPT TRANSACTIONS

- (1) Livestock and poultry sold for raising food for human consumption and breeding stock for such purposes.
- (2) Feed and medicines sold for livestock and poultry described in Item (1).
- (3) Seeds, plants, fertilizers, fungicides, insecticides, and herbicides.

(4) **Implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.**

(5) Milking machines, filters, strainers, and aerators.

(6) Gasoline and other fuel and oil for farm tractors and for other exempt farm machinery.

(7) Grease and repair parts necessary for the servicing of exempt equipment.

(8) Containers used to package farm products for sale.

(9) Equipment designed to haul animal waste.

(10) Equipment such as needles, syringes, and vaccine pumps.

(e) The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.

(f) If a farmer makes a purchase tax exempt and later determines that the purchase should have been taxable, a use tax is due on the purchase price and should be remitted to the department of revenue along with the next annual income tax return, except for sales tax on gasoline which must be shown on the claim for motor fuel tax refund.

(Emphasis added).

In other words, the equipment must be used directly in the direct production of agricultural products (referred to also as the "double direct test") to be exempt from sales or use tax. As mentioned above, IC § 6-2.5-5-2 states that "transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities." This statute applies a "dual direct" test in which a purchase for agriculture use is exempt only when the property is directly used in the direct production, extraction, harvest, or processing of agricultural commodities.

Taxpayer argues that the Tractors were used for farm related activities, inter alia, spreading fertilizer, reseeding pasture, hauling tools and equipment, and to pull a bush hog. Therefore, because the Tractors are used for farm related activities, Taxpayer maintains that the Tractors should be equally exempt from sales and use tax.

The reseeding and fertilizing of the ground for pasture and most of the other farm related activities which taxpayer relates, though important, do not meet the double direct test required by Indiana law. Because the Tractors in question were not directly used in the direct production, extraction, harvest, or processing of an agricultural commodity, in all the uses described by the taxpayer, their purchase and use were only partially exempt from Indiana sales and use tax.

However, the Tractors in question were also used for reasons other than for the purposes mentioned above. The Department has found that one of the stated reasons for the utilization of the Tractors is exempt for sales and use tax. Under IC § 6-2.5-5-2, exempt uses for which the taxpayer used the Tractors include hauling feed to livestock to be sold. To the extent that the Tractors were used for this exempt purpose, the sales and use tax should be reduced on a prorated basis. Based on the Form AGQ-100 filed by Taxpayer, there was some exempt use of the Tractors and the partial exemption was granted accordingly.

However, Taxpayer failed to provide information on how often the Tractors were used for this purpose. Taxpayer will need to provide the Department information showing how many days that the Tractors were used for this purpose in order to calculate the exemption rate for the Tractors based on the information supplied by Taxpayer. Taxpayer must provide this information within thirty (30) days of this Letter of Findings.

Additionally, Taxpayer also makes the point that one of the Tractors was purchased over four years ago. Because Taxpayer is not a registered retail merchant, Taxpayer would have been required to report use tax on the 2008 transaction on his individual IT-40 income tax returns due on April 15, 2009. IC § 6-8.1-5-2(a) provides that:

Except as otherwise provided in this section, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed, or either of the following:

(1) The due date of the return.

(2) In the case of a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax, the end of the calendar year which contains the taxable period for which the return is filed.

This allows the Department to make an assessment three years from the date of the IT-40, as opposed to the three years from the date of the 2008 purchase.

FINDING

Taxpayer's protest is sustained to the extent discussed above, subject to review of the additional information

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